

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

## APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

David McKee &amp; Judith McKee

(b) County of Residence of First Listed Plaintiff Gallatin Co.

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Unruh Turner  
Burke & Frees, P.C. PO BOX 515  
West Chester, PA 19381 (610) 692-1371

**DEFENDANTS** Paul DeJuliis, Charles Wilson,  
Randall Gillespie, and Expanko Cork Co.,  
Inc.

County of Residence of First Listed Defendant Chester Co.

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
 LAND INVOLVED.

Attorneys (If Known) Halberstadt Curley, LLC  
1100 E. Hector St. Ste 425, Conshohocken, PA  
19428 (610) 834-8819

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |  |
|---|--|
| <b>PTF</b>                              | <b>DEF</b>   |
| Citizen of This State                   | <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1 Incorporated or Principal Place of Business In This State     |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation   |
|   | <input type="checkbox"/> 4 <input type="checkbox"/> 4  |
|   | <input type="checkbox"/> 5 <input type="checkbox"/> 5  |
|   | <input type="checkbox"/> 6 <input type="checkbox"/> 6  |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 1441 (a)Brief description of cause: Non-payment for breach of non-compete agreement

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 300,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
February 12, 2008

SIGNATURE OF ATTORNEY OF RECORD

## FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## APPENDIX I

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

David McKee and Judith McKee	:	CIVIL ACTION
	:	
	:	
v.	:	
Paul DeJuliis, Charles Wilson,	:	
Randall Gillespie, Expanko Cork	:	NO.
Company, Inc.	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ~~( )~~

<u>2/12/2008</u>	<u>Scott M. Rothman</u>	<u>Defendant</u>
<b>Date</b>	<b>Attorney-at-law</b>	<b>Attorney for</b>
<u>(610) 834-8819</u>	<u>(610) 834-8813</u>	<u>srothman@halcur.com</u>
<b>Telephone</b>	<b>FAX Number</b>	<b>E-Mail Address</b>

## UNITED STATES DISTRICT COURT

## APPENDIX F

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1660 Moose Point Rd., Bozeman, MT 59715

Address of Defendant: 1129 Dorset Dr. West Chester, PA 19382

Place of Accident, Incident or Transaction: Commonwealth of Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☒ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

### ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Scott M. Rothman, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 2/12/2008

Attorney-at-Law

201478

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 2/12/2008

Attorney-at-Law

201478

Attorney I.D.#

*Designation Form Cont'd:*

Defendants

Charles Wilson  
111 Misty Lane  
Reading, PA 19606

Randall Gillespie  
1201 NE Queens Lane  
Hillsboro, OR 97124

Expanko Cork Company, Inc.  
1129 West Lincoln Highway  
Coatesville, PA 19320

## UNITED STATES DISTRICT COURT

## APPENDIX F

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1660 Moose Point Rd., Bozeman, MT 59715

Address of Defendant: 1129 Dorset Dr. West Chester, PA 19382

Place of Accident, Incident or Transaction: Commonwealth of Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☒ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Scott M. Rothman, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 2/12/2008

[Signature]  
Attorney-at-Law

201478

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 2/12/2008

[Signature]  
Attorney-at-Law

201478

Attorney I.D.#

*Designation Form Cont'd:*

Defendants

Charles Wilson  
111 Misty Lane  
Reading, PA 19606

Randall Gillespie  
1201 NE Queens Lane  
Hillsboro, OR 97124

Expanko Cork Company, Inc.  
1129 West Lincoln Highway  
Coatesville, PA 19320

**HALBERSTADT CURLEY, LLC**

By: Charles V. Curley / Scott M. Rothman

Attorney I.D. Nos. 60486 / 201478

1100 E. Hector Street, Suite 425

Conshohocken, PA 19428

610 834 8819

610 834 8813 (fax)

Attorneys for Defendants

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>DAVID McKEE and JUDITH McKEE</p> <p>Plaintiffs,</p> <p>v.</p> <p>PAUL DeJULIIS, CHARLES WILSON, RANDALL GILLESPIE, and EXPANKO CORK COMPANY, INC.</p> <p>Defendants.</p>	<p>Civil Action No.</p>
---	-------------------------

**NOTICE OF REMOVAL**

To: David McKee and Judith McKee  
c/o Nancy J. Glidden, Esquire  
Unruh, Turner, Burke & Frees, P.C.  
P.O. Box 515  
West Chester, PA 19381-0515

**PLEASE TAKE NOTICE THAT** Defendants Paul DeJuliis, Charles Wilson, Randall Gillespie, and Expanko Cork Company, Inc. (collectively "Defendants") hereby remove this action from the Court of Common Pleas of Chester County, Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania, pursuant to 28 U.S.C. §§ 1441(a) and 1446. In support of this Notice of Removal, Defendants state the following:

1. On January 24, 2008, plaintiffs David McKee and Judith McKee (“Plaintiffs”) filed a Complaint against the above-captioned Defendants in the Court of Common Pleas of Chester County, Pennsylvania, titled *David McKee, et al. v. Paul DeJuliis, et al.*, and docketed at Case No. 08-00877 (the “Complaint”). A true and correct copy of the Complaint is attached hereto as Exhibit “A.”

2. The Complaint indicates on its face that there is diversity of citizenship between the opposing parties. As stated therein, Plaintiffs are citizens of the state of Montana. Defendant Randall Gillespie is a citizen of Oregon, while the remaining Defendants are citizens of Pennsylvania. There is, therefore, complete diversity of citizenship among the opposing parties.

3. As set forth in the Complaint, in connection with a stock purchase agreement, Defendant Expanko Cork Company, Inc. (“Expanko”) agreed to pay the Plaintiffs a total of \$300,000.00 in exchange for a non-compete covenant.

4. Expanko has withheld payment because it has determined that the Plaintiffs have breached the terms of the non-compete covenant.

5. Plaintiffs dispute that they have breached the covenant.

6. At issue, therefore, is whether Expanko is (a) entitled to recover the portions of the \$300,000.00 payment already tendered to Plaintiffs and (b) cease all further payments.

7. Accordingly, it is clear that the amount in controversy exceeds \$75,000, and that this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332.

8. The action is therefore properly removed under 28 U.S.C. § 1441(a).



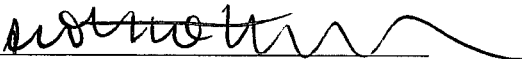
9. In accordance with 28 U.S.C. § 1446, this Notice of Removal is being filed within 30 days after service of the Complaint.

10. Written notice of the filing of this Notice of Removal is being served on this date on Plaintiff's counsel pursuant to 28 U.S.C. § 1446(d).

11. Defendants will promptly file a true and correct copy of the Notice of Removal with the Prothonotary of the Court of Common Pleas of Chester County, Pennsylvania.

WHEREFORE, the above Defendants hereby remove the action now pending in the Court of Common Pleas of Chester County, Pennsylvania, Case No. 08-00877, titled *David McKee, et al. v. Paul DeJuliis, et al.*, to the United States District Court for the Eastern District of Pennsylvania.

HALBERSTADT CURLEY, LLC

By: 

Charles V. Curley

Scott M. Rothman

Attorney I.D. Nos. 60486 / 201478

1100 E. Hector Street, Suite 425

Conshohocken, PA 19428

610 834 8819 (phone)

610 834 8813 (fax)

ccurley@halcur.com

srothman@halcur.com

*Attorneys for Defendants*

Date: 2/12/08

# CHESTER COUNTY COURT OF COMMON PLEAS CIVIL COVER SHEET

08-00877

**1. CASE CAPTION:**

**IA. CASE NO.:**

David McKee and Judith McKee

vs.

Paul DeJuliis, Charles Wilson, Randall Gillespie and  
Expanko Cork Company, Inc.

Do not staple or attach on this side

FILED

08 JAN 24 PM 3:52

OFFICE OF THE  
PROTHONOTARY  
CHESTER CO., PA.

**2. PLAINTIFF(s): (Name, address)**

David and Judith McKee  
1660 Moose Point Road  
Boseman, MT 59715

**3. PLAINTIFF'S or (circle one)**

**DEFENDANT'S COUNSEL: (FILING ATTORNEY)**  
(Name, firm, address, telephone and attorney ID#)

Donald C. Turner, Esquire/Nancy J. Glidden, Esquire  
Attorney I.D. Nos. 39003/78961  
Unruh, Turner, Burke & Frees, P.C.  
P.O. Box 515  
West Chester, PA 19381-0515  
610-692-1371

**4. DEFENDANT(s): (Name, address)**

Paul DeJuliis  
1129 Dorset Drive  
West Chester, PA 19382

**5. ARE THERE, ANY RELATED CASES?**

(see C.C.R.C.P. 200B)

☐ Yes ☒ No

IF YES, SHOW CASE NOS. AND CAPTIONS:

(continued on next page)

**6. IF THIS IS AN APPEAL FROM A DISTRICT JUSTICE JUDGMENT, WAS APPELLANT ☐ PLAINTIFF OR ☐ DEFENDANT IN THE ORIGINAL ACTION?**

**7. CASE CODE:** 82 **DESCRIPTION:** (see reverse side) Breach of Contract

**8. IS THIS AN ARBITRATION CASE?** ☐ Yes ☒ No **JURY TRIAL DEMANDED**  
(Arbitration Limit is \$50,000. See C.C.R.C.P. 1301.1)

**ARBITRATION CASES ONLY**

An Arbitration hearing in this matter is scheduled for  
at in the Jury Lounge,  
Chester County Court House, West Chester, PA. The  
parties and their counsel are directed to report to the  
Juror's Lounge for an arbitration hearing in this  
matter on the date and time set forth above.

This matter will be heard by a Board of Arbitrators at  
the time, date and place specified but, if one or more  
of the parties is not present at the hearing, the matter  
may be heard at the same time and date before a  
judge of the court without the absent party or parties.  
There is no right to a trial *de novo* on appeal from a  
decision entered by a judge.

**NOTICE OF TRIAL LISTING DATE**

Pursuant to C.C.R.C.P. 249.3, if this case is not  
subject to compulsory arbitration it will be  
presumed ready for trial twelve (12) months from  
the date of the initiation of the suit and **will be  
placed on the trial list one (1) year from the date  
the suit was riled** unless otherwise ordered by the  
Court.

To obtain relief from automatic trial listing a party  
must proceed pursuant to C.C.R.C.P. 249.3(b),  
request an administrative conference and obtain a  
court order deferring the placement of the case on  
the trial list until a later date.

FILE WITH: Prothonotary of Chester County, 2 M

O. Box 2748, West Chester, PA 19380-0991

THIS COVER SHEET IS REQUIRED BY  
PARTIES TO THE ACTION IMMEDIATELY

BE SERVED UPON ALL OTHER  
ENOUGH COPIES FOR SERVICE

SEE REVERSE SIDE FOR CASE CODE

(FILL IN EACH PRIOR TO FILLING OUT)

EXHIBIT

A

Civil Cover Sheet continued...

Charles Wilson  
201 Candalwod Lane  
Exton, PA 19341

Randall Gillespie  
1124 New Yamhill Street  
McMinnville, OR 97128

Expanko Cork Company, Inc.  
1129 West Lincoln Highway  
Coatesville, PA 19320

**UNRUH, TURNER, BURKE & FREES, P.C.**

Attorneys for Defendants

By: Donald C. Turner/Nancy J. Glidden

Atty. Nos. 39006/78961

17 West Gay Street

P.O. Box 515

West Chester, PA 19381-0515

(610) 692-1371

David McKee,  
1660 Moose Point Road  
Bozeman, MT 59715

and

Judith McKee  
1660 Moose Point Road  
Bozeman, MT 59715

Plaintiffs,

v.

Paul DeJuliis  
1129 Dorset Drive  
West Chester, PA 19352

and

Charles Wilson  
111 Misty Lane  
Reading, PA 19606

and

Randall Gillespie  
1201 NE Queens Lane  
Hillsboro, Oregon 97124

and

Expanko Cork Company, Inc.  
1129 West Lincoln Highway  
Coatesville, PA 19320

Defendants.

In the Court of Common Pleas

Chester County, Pennsylvania

Civil Action – Law

No. \_\_\_\_\_

FILED  
08 JAN 24 PM 3:52  
CLERK OF THE  
PROBATIONARY  
CLERK CO., PA.

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court

without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

**LAWYER REFERENCE AND INFORMATION SERVICE**

**Chester County Bar Association  
15 West Gay Street, 2<sup>nd</sup> Floor  
West Chester, PA 19380  
(610) 429-1500**

**UNRUH, TURNER, BURKE & FREES, P.C.**

Attorneys for Defendants

By: Donald C. Turner/Nancy J. Glidden

Atty. Nos. 39006/78961

17 West Gay Street

P.O. Box 515

West Chester, PA 19381-0515

(610) 692-1371

David McKee,  
1660 Moose Point Road  
Bozeman, MT 59715

and

Judith McKee  
1660 Moose Point Road  
Bozeman, MT 59715

Plaintiffs,

v.

Paul DeJuliis  
1129 Dorset Drive  
West Chester, PA 19352

and

Charles Wilson  
111 Misty Lane  
Reading, PA 19606

and

Randall Gillespie  
1201 NE Queens Lane  
Hillsboro, Oregon 97124

and

Expanko Cork Company, Inc.  
1129 West Lincoln Highway  
Coatesville, PA 19320

Defendants.

In the Court of Common Pleas

Chester County, Pennsylvania

Civil Action – Law

No. \_\_\_\_\_

**COMPLAINT/CIVIL ACTION**

Plaintiff David McKee asserts causes of action against the Defendants, Paul DeJuliis (“DeJuliis”), Charles Wilson (“Wilson”), Randall Gillespie (“Gillespie”), and Expanko Cork Company, Inc. (“Expanko”), as follows:

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COURT  
CHESTER CO., PA.

**Parties**

1. Plaintiff, David McKee is an adult citizen of the State of Montana with a residence located at 1660 Moose Point Road in Bozeman, Montana. He was formerly the majority shareholder of Expanko.

2. Plaintiff, Judith McKee is an adult citizen of the State of Montana with a residence located at 1660 Moose Point Road in Bozeman, Montana.

3. Defendant, Paul DeJuliis, is an adult citizen of the Commonwealth of Pennsylvania and resides therein at 1129 Dorset Drive, West Chester, Chester County, PA 19382. DeJuliis is presently a stockholder in Expanko and serves as Expanko's Chief Executive Officer.

4. Defendant, Charles Wilson, is an adult citizen of the Commonwealth of Pennsylvania and resides therein at 111 Misty Lane, Reading, Berks County PA 19606. Wilson is a stockholder in Expanko and serves as the company's Chief Financial Officer.

5. Defendant, Randall Gillespie, is an adult who, upon information and belief, is a citizen of the State of Oregon with a residence located therein at 1201 NE Queens Lane, Hillsboro, Oregon 97124. Gillespie is a stockholder in Expanko and serves as the company's Marketing Director.

6. Defendant, Expanko Cork Company, Inc. is a Pennsylvania corporation with a principal place of business therein at 1129 West Lincoln Highway in Coatesville, Pennsylvania.

**Jurisdiction and Venue**

7. The jurisdiction of the Courts of Common Pleas of the Commonwealth of Pennsylvania is proper because the acts and omissions complained of occurred within the Commonwealth of Pennsylvania.

8. Venue is proper in the Court of Common Pleas of Chester County because the acts and omissions complained of occurred within Chester County, PA.

9. The Courts of Common Pleas of the Commonwealth of Pennsylvania and the Courts of Chester County may exercise personal jurisdiction over Wilson and Gillespie because they entered Chester County, Pennsylvania for the purpose of doing business and executing and breaching contracts there.

**Material Facts**

10. Prior to August 22, 2007, David McKee, Judith McKee and Albert A. Ciardi III, were the sole shareholders of Expanko.

11. Prior to August 22, 2007, DeJuliis, Wilson and Gillespie were employed by Expanko.

12. On July 16, 2007, DeJuliis, Wilson and Gillespie (sometimes collectively referred to as "Buyers") entered into a Stock Purchase Agreement with David McKee, Judith McKee and Albert A. Ciardi III ( sometimes collectively referred to as "Sellers") pursuant to which the Buyers were to purchase Expanko from the Sellers. A copy of the Stock Purchase Agreement is attached as Exhibit A.

13. The closing occurred on August 22, 2007, at which time the Buyers became the sole shareholders and owners of Expanko.



14. The Stock Purchase Agreement included the following provision:

7. Covenant Not to Compete. [David McKee and Judith McKee] covenant and warrant that they will not compete (as hereinafter defined) with [Expanko] on a global basis for a period of three (3) years (the "Term") from the Closing Date. In return, the [DeJuliis, Wilson and Gillespie] will cause [Expanko] to pay to the [David McKee and Judith McKee] the sum of One Hundred Thousand Dollars (\$100,000) annually for a period of three (3) years from the Closing Date. Said amount shall be payable in equal monthly installments of Eight Thousand Three Hundred Thirty-Three (\$8,333) each commencing one month after the Closing Date.

\* \* \*

8. Judith McKee's Health Insurance. Buyers will cause [Expanko] to continue to pay Judith McKee's health insurance during the Term of the non-compete set forth in paragraph 7 above.

Stock Purchase Agreement, Exhibit A hereto at 2-3, paras. 7-8. (These provisions of the Stock Purchase Agreement are hereinafter referred to as the "Noncompetition Covenant.")

15. Expanko was a party to the Stock Purchase Agreement for purposes of accepting and binding itself to the provisions of the Noncompetition Covenant. *See*, Exhibit A hereto at 12 (where Expanko executed the Stock Purchase Agreement "[f]or purposes of accepting the provisions of Paragraphs 7, 8, 9, 11, 12, 14, 16, 18, 20 and 21.")

16. Thus, In exchange for David McKee and Judith McKee's adherence to the Noncompetition Covenant, Expanko is required to: 1) make monthly payments of \$ 8,333 to the David McKee and Judith McKee through and including September 2010, and; 2) pay Judith McKee's health insurance premiums through and including September 2010.

17. Thus, In exchange for David McKee and Judith McKee's adherence to the Noncompetition Covenant, DeJuliis, Wilson and Gillespie are required to: 1) cause Expanko to make monthly payments of \$ 8,333 to the David McKee and Judith McKee through and including September 2010, and; 2) pay Judith McKee's health insurance premiums through and including September 2010.

18. David McKee and Judith McKee have at all times complied with their obligations under the Stock Purchase Agreement and continue to comply with their obligations under the Stock Purchase Agreement.

19. David McKee and Judith McKee received payments pursuant to the Noncompetition Covenant of \$8,333.00 for the months of September, October and November, 2007.

20. Expanko did not make any such payment to David McKee and Judith McKee for the month of December 2007.

21. DeJuliis, Wilson and Gillespie did not cause Expanko to make any such payment for the month of December 2007.

22. By letter dated December 17, 2007, DeJuliis advised David McKee that Expanko: 1) would not pay the December 2007 Covenant Payment; 2) would not make any further Noncompetition Covenant payments, and; 3) intended to seek recovery for \$25,000.00 in Covenant Payments already made. A copy of the December 17, 2007 Letter ("DeJuliis Letter") is attached as Exhibit B.

23. The DeJuliis Letter further stated that Expanko would discontinue health insurance coverage for Judith McKee, unless David McKee paid \$655.07 per month for

the coverage going forward and remitted \$2,677.80 that Expanko had paid for coverage for the prior four months. *See*, Exhibit B hereto at 2-3.

24. In order to avoid having Judith McKee's health insurance lapse, on December 27, 2007, David McKee wire transferred \$3,337.87 to Expanko's account, the receipt of which Wilson acknowledged.

25. David McKee also forwarded the \$660.07 for February coverage and, out of necessity, will continue to do so going forward in order to avoid a lapse in Judith McKee's health insurance coverage.

26. Expanko's refusal to make payments to and for David McKee and Judith McKee pursuant to the Noncompetition Covenant is a material breach of Expanko's obligations under the Stock Purchase Agreement.

27. DeJuliis', Wilson's and Gillespie's failures to cause Expanko to make payments to and for David McKee and Judith McKee pursuant to the Noncompetition Covenant is a material breach of their obligations under the Stock Purchase Agreement.

## **COUNT I**

### **BREACH OF CONTRACT**

#### **[David McKee and Judith McKee v. DeJuliis]**

28. David McKee and Judith McKee incorporate the allegations and averments of the preceding paragraphs as though set forth at length.

29. DeJuliis personally and as a Buyer agreed to cause Expanko to pay the Noncompetition Covenant Payments to David McKee and Judith McKee. *See*, Stock Purchase Agreement, Exhibit A hereto, at para. 7.

30. Similarly, DeJuliis personally and as a Buyer agreed to cause Expanko to continue to pay for Judith McKee's health insurance during the term of the Noncompetition Covenant. *See*, Stock Purchase Agreement, Exhibit A hereto, at para. 8.

31. DeJuliis failed to cause Expanko to make the Noncompetition Covenant Payments and to pay for Judith McKee's health insurance.

32. DeJuliis's failure to cause Expanko to make these payments is a material breach of the Stock Purchase Agreement.

33. As a result of DeJuliis' breach of these contractual obligations, David McKee and Judith McKee have, to date, sustained damages in the amount of \$20,653.94. These damages will continue to accrue going forward at the rate of \$8,993.70 per month.

WHEREFORE, Plaintiffs, David McKee and Judith McKee request entry of judgment in their favor and against the Defendant, Paul DeJuliis in an amount in excess of \$50,000, and for such other relief as the Court may deem just and proper.

## **COUNT II**

### **BREACH OF CONTRACT**

**[David McKee and Judith McKee v. Wilson]**

34. David McKee and Judith McKee incorporate the allegations and averments of the preceding paragraphs as though set forth at length.

35. Wilson personally and as a Buyer agreed to cause Expanko to pay the Noncompetition Covenant Payments to McKee. *See*, Stock Purchase Agreement, Exhibit A hereto, at para. 7.

36. Similarly, Wilson personally and as a Buyer agreed to cause Expanko to continue to pay for Judith McKee's health insurance during the term of the Noncompetition Covenant. *See*, Stock Purchase Agreement, Exhibit A hereto, at para. 8.

37. Wilson failed to cause Expanko to make the Noncompetition Covenant Payments and to pay for Judith McKee's health insurance.

38. Wilson's failure to cause Expanko to make these payments is a material breach of the Stock Purchase Agreement.

39. As a result of Wilson's breach of these contractual obligations, David McKee and Judith McKee have, to date, sustained damages in the amount of \$20,653.94. These damages will continue to accrue going forward at the rate of \$8,993.70 per month.

WHEREFORE, Plaintiffs, David McKee and Judith McKee request entry of judgment in their favor and against the Defendant, Charles Wilson in an amount in excess of \$50,000, and for such other relief as the Court may deem just and proper.

### **COUNT III**

#### **BREACH OF CONTRACT**

**[David McKee and Judith McKee v. Gillespie]**

40. David McKee and Judith McKee incorporate the allegations and averments of the preceding paragraphs as though set forth at length.

41. Gillespie personally and as a Buyer agreed to cause Expanko to pay the N Noncompetition Covenant Payments to McKee. *See*, Stock Purchase Agreement, Exhibit A hereto, at para. 7.

42. Similarly, Gillespie personally and as a Buyer agreed to cause Expanko to continue to pay for Judith McKee's health insurance during the term of the Noncompetition Covenant. *See*, Stock Purchase Agreement, Exhibit A hereto, at para. 8.

43. Gillespie failed to cause Expanko to make the Noncompetition Covenant Payments and to pay for Judith McKee's health insurance.

44. Gillespie's failure to cause Expanko to make these payments is a material breach of the Stock Purchase Agreement.

45. As a result of Gillespie's breach of these contractual obligations, David McKee and Judith McKee have, to date, sustained damages in the amount of \$20,653.94. These damages will continue to accrue going forward at the rate of \$8,993.70 per month.

WHEREFORE, Plaintiffs, David McKee and Judith McKee request entry of judgment in their favor and against the Defendant, Randall Gillespie in an amount in excess of \$50,000, and for such other relief as the Court may deem just and proper.

#### **COUNT IV**

##### **BREACH OF CONTRACT**

##### **[David McKee and Judith McKee v. Expanko]**

46. David McKee and Judith McKee incorporate the allegations and averments of the preceding paragraphs as though set forth at length.

47. Expanko was a party to the Stock Purchase Agreement for purposes of accepting and binding itself to the provisions of the Noncompetition Covenant. *See*, Exhibit A hereto at 12 (where Expanko executed the Stock Purchase Agreement "[f]or purposes of accepting the provisions of Paragraphs 7,8,9, 11,12, 14, 16, 18, 20 and 21.")


48. Expanko has failed to and refuses to make payments to and for David McKee and Judith McKee pursuant to the Noncompetition Covenant included in the Stock Purchase Agreement.

49. Expanko's refusal to make payments to and for David McKee and Judith McKee pursuant to the Noncompetition Covenant is a material breach of Expanko's obligations under the Stock Purchase Agreement.

50. As a result of Expanko's breach of these contractual obligations, David McKee and Judith McKee have, to date, sustained damages in the amount of \$20,653.94. These damages will continue to accrue going forward at the rate of \$8,993.70 per month.

WHEREFORE, Plaintiffs, David McKee and Judith McKee request entry of judgment in their favor and against the Defendant, Randall Gillespie in an amount in excess of \$50,000, and for such other relief as the Court may deem just and proper.

UNRUH, TURNER, BURKE & FREES

BY:   
Donald C. Turner  
Nancy J. Glidden  
Attorneys for Plaintiffs,  
David McKee and Judith McKee

# **EXHIBIT “A”**



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**Stock Purchase Agreement**

This Stock Purchase Agreement (this "Agreement") made as of this 16th day of July, 2007 is by and between Paul DeJuliis, Charles Wilson and Randall Gillespie (collectively, "Buyers") and David McKee and Judith McKee (the "McKees") and Albert A. Ciardi, III ("Ciardi") (the McKees and Ciardi collectively, "Sellers").

**Background**

WHEREAS, the Buyers and the McKees, along with Robert McKee ("Robert") and Expanko Cork Company, Inc. ("Expanko" or the "Company") are parties to a certain Settlement and Separation Agreement dated January 24, 2007 ("Settlement Agreement") (the Buyers and Sellers, collectively the "Parties" or individually a "Party"); and

WHEREAS, Expanko is in the business of selling architectural products used as floor tiles, wall coverings and ceiling tiles through agents and distributors in the United States and abroad. It buys the products it sells from a variety of sources both in the United States and abroad. The Company emerged from bankruptcy proceedings in May, 2006 and still has obligations to creditors under its plan of reorganization, one of which creditors is David McKee; and

WHEREAS, the Settlement Agreement provided, among other items, that the Buyers would cause the Company to make certain payments to the McKees and enter into a requirements contract with a new company to be formed by Robert for the purchase of a product line of cork rubber flooring, known as XCR4 (the "XCR4 Product Line"), as well as any other flooring material made of cork and rubber, and for the Buyers to purchase the stock of the Company owned by the McKees over a period of time; and

WHEREAS, the Parties wish to amend the provisions of the Settlement Agreement by providing for the immediate payment of the obligations owed to David McKee by the Company and for the purchase of the McKees' stock as well as the stock owned by Ciardi.

**Agreement**

Now therefore in consideration of the mutual promises herein contained, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Acquisition of Stock. At the Closing (as hereinafter defined), the Buyers will acquire all of the issued and outstanding common stock of the Company ("Stock")

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from the Sellers. The Stock owned by the Sellers is as set forth on Schedule 1 attached hereto.

2. Purchase Price. The purchase price ("Purchase Price") to be paid for the McKees Stock shall be Three Hundred Thousand Dollars (\$300,000). The purchase price for the Ciardi stock shall be Seventeen Thousand Five Hundred Dollars (\$17,500). The Purchase Price shall be paid at Closing by wire transfer in cash.
3. Outstanding Stock. Sellers represent and warrant that (i) the Stock listed on Schedule 1 represents all of the issued and outstanding stock of all classes of the Company and (ii) they own all of such Stock. At Closing, certificates representing all of the Stock shall be endorsed in blank and delivered to Buyers.
4. Corporate Records. At Closing, Sellers shall turn over and deliver to Buyers all the books and records of the Company in their possession, including the stock book, minute book and seal.
5. Note to David McKee. At Closing, the Buyers shall cause the Company to prepay the Company's outstanding note (the "Note") to David McKee in full plus accrued interest. As of the Closing Date, the Note will have a principal balance of \$572,564.42. Pending Closing the Buyers will cause Expanko to make the required monthly payments on the Note to David McKee.
6. Closing. Closing under this Agreement shall take place on August 22, 2007 (the "Closing Date") or on such earlier date as the Parties may agree. Closing shall be held in the offices of McCarter & English, Suite 700, 1735 Market Street, Philadelphia, PA 19103 at 10:30 A.M.
7. Covenant Not To Compete. The McKees covenant and warrant that they will not compete (as hereinafter defined) with the Company on a global basis for a period of three (3) years (the "Term") from the Closing Date. In return, the Buyers will cause the Company to pay to the McKees the sum of One Hundred Thousand Dollars (\$100,000) annually for a period of three (3) years from the Closing Date. Said amount shall be payable in equal monthly installments of Eight Thousand Three Hundred Thirty-Three Dollars (\$8,333) each, commencing one month after the Closing Date. "Not Compete" shall mean that the McKees covenant and agree that during the Term, they shall not, directly or indirectly, for themselves, individually or collectively, or on behalf of any other person, firm, corporation or other entity, whether as principal, agent, employee, stockholder, partner, officer, member, director, sole proprietor, or otherwise, finance or provide financing for, engage in, participate in or assist in any business whose activities are competitive with the activities of the Company anywhere in the world. Further the McKees covenant and agree that during the Term, they shall not, directly or indirectly, for themselves, individually or collectively, or on behalf of any other person, firm, corporation or other entity, whether as principal, agent, employee, stockholder, partner, officer, member, director, sole proprietor, or otherwise:

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(i) Solicit the trade of or trade with, or otherwise do business with or interfere with the Company's relations with, any customer or prospective customer or strategic business partner of the Company;

(ii) Solicit or induce, or attempt to solicit or induce, any employee of the Company to leave the Company for any reason whatsoever or hire any employee of the Company;

(iii) Make any disparaging remarks about the Company's business, products, services or personnel; or

(iv) Take any action that might divert from the Company any business or opportunity that would be within the scope of any present or contemplated future business of the Company.

8. Judith McKee's Health Insurance. Buyers will cause the Company to continue to pay Judith McKee's health insurance during the Term of the non-compete set forth in Paragraph 7 above.

Rob 9. XRC4 Product Line. The Parties agree that Paragraph 9 of the Settlement Agreement was amended by paragraph 7 of the Letter of Intent dated June 22, 2007 and executed by the Parties, Robert McKee and RBG, LLC (the "Letter of Intent"). The Company, Robert McKee and RB & G Products, LLC (also known as RBG, LLC) are executing this Agreement for the purpose of acknowledging the provisions contained in this paragraph 9 and agreeing that provisions of Paragraph 9 of the Settlement Agreement not amended by Paragraph 7 of the Letter of Intent shall be rendered null and void and of no further effect Robert McKee, for himself and RB & G Products, LLC (also known as RBG, LLC), is executing this Agreement for the purpose of acknowledging that neither he nor RB & G Products, LLC (also known as RBG, LLC) have any rights in the name "XRC4" and that such rights are with Expanko.

10. Brokers. The Parties represent and warrant that neither has retained any broker or finder with respect to this transaction.

Rob 11. Releases. The McKees and Ciardi on the one part and Expanko and the Buyers on the other part, hereby mutually release each other from any and all liability and claims with respect to all matters, including under the Settlement Agreement, which occurred or accrued prior to the date of this Agreement (and which shall also cover all liability and claims occurring or accruing from the date of this Agreement and through Closing), except for their respective obligations set forth herein to occur in the future. With respect to any claims that exist as of the date hereof between Expanko and Robert McKee and RB & G Products, LLC (also known as RBG, LLC) for out of specification XCR4 Product (as defined in that

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certain Manufacturing and Supply Agreement dated December 19, 2006 by and between Delta Rubber Products Private Limited ("Delta") and Expanko, which agreement was assigned to RB & G Products, LLC pursuant to the terms of Paragraph 9 of the Settlement Agreement), Robert McKee and RB & G Products, LLC agree to replace all of such out of specification XCR4 Product at no cost to Expanko, provided that (i) such out of specification XCR4 Product was manufactured by Delta after February 1, 2007 and (ii) Expanko and Robert McKee and RB & G Products, LLC agree on the extent of the out of specification XCR4 Product by no later than 5 p.m. EDT on July 25, 2007. Robert McKee and RB & G Products, LLC (also known as RBG, LLC) on the one part and Expanko and the Buyers on the other part, hereby mutually release each other from any and all liability and claims with respect to all matters to the date hereof, including under the Settlement Agreement, except for their respective obligations set forth herein to occur in the future..

*Rob* (12) Settlement Agreement. The provisions of Paragraphs 2, 3, 4, 5, 6, 8, 9, 13, 17, and 18 of the Settlement Agreement shall become null and void upon Closing. The McKees acknowledge that the provisions of Paragraphs 1, 2, 3, 7, 11, 12, 15 and 18 of the Settlement Agreement have been fulfilled by the McKees, the Company and/or the Buyers, as required. Pending Closing Buyers will require Expanko to abide by the terms and conditions of the Settlement Agreement, including its obligations thereunder. The Company, Robert McKee and RB & G Products, LLC (also known as RBG, LLC) are executing this Agreement for the purpose of acknowledging the provisions contained in this paragraph 12.

13. "As Is" Condition of the Company. Buyers acknowledge that they are aware of the financial and business affairs of the Company and by buying the Stock that they are buying the Company "as is". Sellers warrant that, to the best of their knowledge, they have informed the Buyers of all significant contracts to which the Company is a party as of January 24, 2007. Attached as Exhibit A, which by reference thereto is made a part hereof, contains a complete list of significant contracts to which the Sellers have knowledge.

14. Fees and Expenses. The legal fees, accounting fees, and any and all other costs and expenses incurred by the Sellers prior to Closing in connection with the transactions contemplated hereby will be paid by Sellers as of Closing and will not be charged to the Company. The Company shall remain liable for the current outstanding payable in the amount of approximately \$55,000 to Ciardi & Ciardi P.C. and shall pay Ciardi & Ciardi P.C. for the completion of its work for the Company in connection with its bankruptcy proceedings. The Company acknowledges and agrees that it will remain liable for all post petition fees charged by and owed to MacElree Harvey, Ltd. The Company acknowledges and agrees that any pre-petition fees owed to MacElree Harvey, Ltd. will be paid as directed by the Court. Buyers will pay all fees, costs and any and all expenses incurred by them..

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Feb 15. Publicity. The terms of this Agreement are confidential, and Sellers, Robert or Buyers shall not release or disclose any material or information contained herein either prior to or after the Closing. However, the Parties may disclose this Agreement to their professional advisors and financing sources who are in a confidential relationship with them. Prior to Closing no press release or other public disclosure shall be made by any Party without submitting a copy to the other Party for review and comment. After Closing Buyers may issue a press release stating that they have acquired all the Stock of Company but shall not disclose any financial information with respect to this Agreement.

16. Governing Law; Jurisdiction; Venue. This Agreement shall be deemed by the parties to have been entered into, and shall be governed by, construed in accordance with, and interpreted and enforced pursuant to, the laws of the Commonwealth of Pennsylvania solely, except to the extent, if any, that federal law governs and supersedes Pennsylvania law and without regard to conflict of law principles. The Parties agree that no Party shall bring any action, claim or suit in any jurisdiction other than the Commonwealth of Pennsylvania with respect to any claims or causes of action arising out of this Agreement. Both Parties agree to submit to the jurisdiction of the Court of Common Pleas of Chester County, Pennsylvania, and to the Federal District Court for the Eastern District of Pennsylvania, and to bring suit or other proceeding only and exclusively in such courts. Both Parties waive any claims or defense based on venue or improper venue or on any theory, such as "forum non conveniens" which would suggest that a suit or proceeding be brought in another jurisdiction or in another venue. Both Parties waive trial by jury in any action, complaint, suit or proceeding.

The rules of construction construing the terms hereof against the draftsman shall not apply. The Parties agree that there is no adequate remedy at law for a violation of Section 7 hereof by David McKee and that Buyers and the Company may bring an action in equity to seek an injunction for such a violation as well as for monetary damages Buyers and the Company may suffer, provided, however, such monetary damages shall be limited to amounts already paid to David McKee under Section 7 hereof.

17. Ciardi's Resignation. At Closing Ciardi will resign as a director of the Company.

18. David McKee as an Unsecured Creditor. David McKee is a member of the pool of unsecured creditors of the Company. The Company owes this group approximately \$180,000, of which approximately \$120,000 is owed to David McKee. At Closing Buyers will purchase from David McKee his claim for the sum of \$32,436. Upon purchase Buyers will cancel the obligation. David McKee will execute a release to the Company acknowledging payment in full of his claim as an unsecured creditor of the Company.

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19. Breakup Fee. Recognizing that to carry out the provisions of this Agreement, Buyers will spend significant time and expense, Sellers hereby agree that so long as this Agreement remains in full force and effect, they will not negotiate or conduct any discussions with any person or entity other than Buyers with respect to the matters covered by this Agreement. If the Sellers do not fulfill their obligations under this Agreement, Sellers shall pay Buyers, on demand, the sum of \$100,000 as liquidated damages and not as a penalty.

20. Additional Agreements and sums owed McKees.

a. The Company agrees that at Closing it will pay the McKees cash in the amount of \$5,000 for any Xcor Manufacturing, LLC equipment in its possession, or previously in its possession and used to settle an outstanding invoice with Van Horn Rigging. This includes, but is not limited to the Clarke Propane Forklift.

Rob (21) Amendment to Letter of Intent. The Letter of Intent incorrectly identifies RBG, LLC as the entity controlled by Robert McKee. The Parties, the Company, and Robert McKee agree that the correct name of the entity controlled by Robert McKee, which was a signatory to the Letter of Intent, is RB & G Products, LLC.

22. Due Authority; Binding Agreement. Each Party represents and warrants that the execution and delivery of this Agreement by such Party and the performance by such Party of their obligations hereunder constitutes a valid and binding obligation of such Party, enforceable against such party in accordance with its terms.

23. Binding Nature; Assignment. This Agreement shall be binding on the Parties, their heirs, successors and assigns. A Party may not assign their rights under this Agreement.

24. Entire Agreement; Amendments. This Agreement, including the Exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertakings, whether written or oral with respect to the subject matter contained in this Agreement. No change, waiver or discharge hereof shall be valid unless in writing and signed by all Parties to this Agreement.

25. Counterparts. This Agreement may be executed in several counterparts, all of which taken together shall constitute one agreement between the Parties. Any Party's signature may be by facsimile

26. Notices. All notices to be given under this Agreement shall be in writing and be deemed duly given (i) when delivered by hand, (ii) one business day after being given to a nationally recognized express courier with a reliable system for

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tracking and delivery, (iii) six (6) days after mailing said notice by certified mail, return receipt requested or (iv) when sent by a confirmed facsimile with a copy sent by another means specified in this paragraph. Notices shall be addressed to each of the Parties at the address listed below:

Buyers:            Paul DeJuliis  
                         c/o Expanko Cork Company, Inc.  
                         1129 West Lincoln Highway  
                         Coatesville, PA 19320  
                         Telecopy: 610-380-0302

With a copy to:

Rosetta Packer, Esq.  
McCarter & English, LLP  
1735 Market Street, Suite 700  
Philadelphia, PA 19103

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Sellers: David and Judith McKee

Telecopy:

With a copy to:

James B. Urie, Esq  
MacElree Harvey, Ltd.  
17 West Miner Street  
West Chester, PA 19381  
Telecopy: 610-429-4486

Albert A. Ciardi, III  
Ciardi & Ciardi  
One Commerce Square  
Suite 2020  
Philadelphia, PA 19103

A Party may from time to time change their address by giving the other Parties prior written notice in accordance with a method of giving notice set forth herein.

27. Headings. The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

[signatures on following page]



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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

BUYERS



Paul DeJuliis



Charles Wilson



Randall Gillespie

Jul-12-2007 05:3:pm From:MacElree Harvey

610-420-4488

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7-731 P.011/018 F-843

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[signature page of Sellers David McKee and Judith McKee]

SELLERS

David S. McKee 7/12/07  
David McKee

Judith McKee 7/12/07  
Judith McKee

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[signature page of Seller Albert C. Ciardi, III]

---

Albert A. Ciardi, III

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[signature page of Robert McKee, RB & G Products, LLC and  
Expanko Cork Company, Inc. ]

For the purposes of accepting the provisions of Paragraphs 9, 11, 12, 15 and 21:

  
Robert McKee

For the purposes of accepting the provisions of Paragraphs 9, 11, 12, and 21:  
RB & G Products, LLC

By: 

For the purposes of accepting the provisions of Paragraphs 7, 8, 9, 11, 12, 14, 16, 18, 20,  
and 21:

EXPANKO CORK COMPANY, INC.

By: \_\_\_\_\_

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[signature page of Robert McKee, RB & G Products, LLC and  
Expanko Cork Company, Inc. ]

For the purposes of accepting the provisions of Paragraphs 9, 11, 12, 15 and 21:


\_\_\_\_\_  
Robert McKee

For the purposes of accepting the provisions of Paragraphs 9, 11, 12, and 21:  
RB & G Products, LLC

By: \_\_\_\_\_

For the purposes of accepting the provisions of Paragraphs 7, 8, 9, 11, 12, 14, 16, 18, 20,  
and 21:

EXPANKO CORK COMPANY, INC.

By:  \_\_\_\_\_

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**SCHEDULE 1**

**Stock Ownership**

- |                            |                               |
|----------------------------|-------------------------------|
| 1. David McKee -           | 43,170 Shares of Common Stock |
| 2. Judith McKee -          | Zero Shares of Common Stock   |
| 3. Albert A. Ciardi, III - | 2,500 Shares of Common Stock  |

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**EXHIBIT A**

Significant contracts, to the best of Sellers knowledge, to which the Company is a party as of January 24, 2007

Amorim Industrial Solutions  
Specialty Freight Services, Inc.  
Aries International, Inc.  
Sugherificio Michele Lacu  
New Penn  
Arbor Material Handling, Inc.  
Richard T. Byrnes Co., Inc.  
A. Duie Pyle, Inc.  
Toshiba Business Solution  
Uline  
GE Capital  
Greentree Transportation Company  
Spherion  
Advanced Adhesive Tech, Inc.  
United Parcel Service  
Maillie, Falconiero & Company  
Hercules, Inc.  
Emo Trans  
Con-Way Transportation Services, Inc.  
Star Label Products  
Roadway Express, Inc.  
Trout Ebersole & Groff  
MacElree Harvey, Ltd.  
Federal Express Corporation  
Philadelphia Floor Store, Inc.  
United Parcel Service  
CDN Graphics  
Aries International, Inc.  
Sovereign Bank  
Northeast Verizon Wireless  
Citibank USA, N.A.

EXECUTION COPY

FTB Funding, Inc.  
Pennsylvania Department of Revenue  
Independence Blue Cross  
Keystone Health Plan East  
Key Equipment Finance  
Ultimate Systems  
Aqualon Company  
Delta Tech  
Dominion Sample, Ltd.  
Mayer, Shanzer & Mayer, PC  
McKee-Wagner Tenancy  
Ram Industries  
Reed Business Information  
UPS Supply Chain Solutions  
ABF Freight Systems, Inc.  
Airborne Brokerage Services  
Akin, Gump, Strauss, Hauer & Feld  
Amco Tool Div./Color Caulk, Inc.  
American Express  
AT&T  
Atlantic Gasket  
Atrion Communications Resources  
ATX Telecommunication Service  
Beacon Container Corporation  
Beacon Technologies, Inc.  
Belmont and Crystal Springs  
BFI  
Brenntag Northeast  
Brian Kenny  
Brock Contract Services  
Carl Dilatush  
CTCO  
David Cipalla  
David E. McKee  
Degussa Building Systems, Inc.  
DHL Worldwide Express  
Donegal Companies  
Epix Internet Services  
Estes Express Lines  
Exact Software North America  
Exhibits, Inc.  
Grainger  
Harleysville National Bank  
Home Depot CRC  
Imaginus Designs  
Jevic



EXECUTION COPY

Kraft Chemical Company  
L&R Shipping Supply, Inc.  
Lancaster Newspaper, Inc.  
Lin-Gas, Inc.  
Maryland Cork Company, Inc.  
Modern Handling Equipment Co.  
MT&T Credit Services, LLC  
Niehaus Home Center  
Padco Incorporated  
PBCC  
Penn Valley Chemical Company  
Pitney Bowes Purchase Power  
Professional Testing Lab  
R&L Carriers, Inc.  
Ram Industries  
Ramsa  
Reed Business Information  
Rob E. McKee  
Rubenstein's  
St. Paul Travelers  
Staples  
Steve Blocker  
Surbeck Waterjet Company  
The LLB Group  
Toshiba America Information Systems  
Uline  
Ultimate Systems  
Verizon Wireless  
Walter & Jackson, Inc.  
Watkins Trucking  
Win Energy Remc  
Ciardi & Ciardi, P.C.  
Summa Capital Corporation

This Exhibit A was prepared by Seller based upon limited information the Sellers and Sellers' attorneys have in their possession. Sellers were not permitted to review the books and records of the Company in preparing this document to confirm the completeness, accuracy or validity of the contracts listed herein.

# **EXHIBIT “B”**



# Expanko

www.expanko.com

December 17, 2007

Mr. David McKee  
1660 Moose Point Road  
Bozeman, MT. 59715

RE: Covenant Not to Compete

Dear Dave:

I am writing to give you notice that Expanko will not be making the payment for your non-compete which is otherwise due December 22nd. We have reason to believe that you have secretly violated the agreement through your involvement with Corticeira Robinson or a related or successor entity ('Robinson'), historically one of Expanko's major and important suppliers. As you know, paragraph 7 of the July 16, 2007 Stock Purchase Agreement required you not to compete against Expanko on a "global" basis for three (3) years. In consideration for this covenant which was entered into in connection with the sale of all of the common stock of Expanko, the buyers agreed to cause Expanko to pay you the sum of \$100,000 annually during the said three year period. Payments were to be monthly in the amount of \$8,333.33 each commencing one month after closing was completed on our purchase of the stock.

The applicable portion of Paragraph 7 states:

**"Not Compete" shall mean that the McKees covenant and agree that during the Term, they shall not, directly or indirectly, for themselves, individually or collectively, or on behalf of any other person, firm, corporation or other entity, whether as principal, agent, employee, stockholder, partner, officer, member, director, sole proprietor, or otherwise, finance or provide financing for, engage in, participate in or assist in any business whose activities are competitive with the activities of the Company anywhere in the world. Further the McKees covenant and agree that during the Term, they shall not, directly or indirectly, for themselves, individually or collectively, or on behalf of any other person, firm, corporation**



# Expanko

www.expanko.com

or other entity, whether as **principal**, agent, employee, **stockholder**, partner, officer, member, director, sole proprietor, or otherwise:

- (i) Solicit the trade of or trade with, or otherwise do business with or interfere with the Company's relations with, any customer or prospective customer or **strategic business partner of the Company**;
- (ii) Solicit or induce, or attempt to solicit or induce, any employee of the Company to leave the Company for any reason whatsoever or hire any employee of the Company;
- (iii) Make any disparaging remarks about the Company's business, products, services or personnel; or
- (iv) Take any action that might divert from the Company any business or opportunity that would be within the scope of any present or contemplated future business of the Company.

As we understand it, your involvement with Robinson clearly fits within the broad definition of "Non-Compete" that we negotiated for with you and your counsel and which was critical to our purchase of Expanko. At the time of the sale you were well aware that Robinson has had an historical relationship as a chief supplier and strategic business partner of Expanko. The covenant not to compete was designed expressly to prevent you from having this type of investment. The Agreement specifically states that you were to be paid separate consideration for the non-compete so that you would stay out of the tile floor business entirely with no further entanglements, and allow Expanko to operate with no interference from you in any way.

We believe that your significant stockholder position in Robinson has been and is intended to be detrimental to Expanko. Your investment and involvement in Robinson without Expanko's knowledge and consent is an unequivocal and intentional violation of your continuing responsibilities to it. Expanko refuses to pay for a non-compete that you have apparently entered into fraudulently and we intend to seek recovery of the \$25,000 already paid plus additional damages.

In addition to Expanko's withholding of payments your actions have also jeopardized your wife's health insurance coverage which must be paid only as part of the non-compete payment. We will nonetheless



**Expanko**

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continue that coverage and provide you with an invoice for the continuing cost, unless you instruct us to cancel her coverage, providing you prepay us for that coverage including a \$25.00 per month handling charge. To have her health coverage continue for January you must remit \$655.07 (\$630.07 + 25.00) plus reimburse us \$2,677.80 (@ \$630.07 per month) for the 4.25 prior months' coverage by December 28, 2007.

Very Truly Yours,

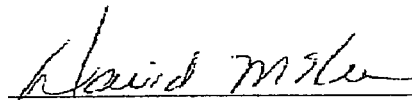
Paul DeJuliis  
CEO

**VERIFICATION**

I, David McKee, am a plaintiff in this matter and I am represented by counsel. I have furnished factual information to my counsel upon which the foregoing Complaint/Civil Action is based. To the extent that the foregoing Complaint/Civil Action is based on the factual information provided to counsel, I verify that those facts are true and correct to the best of my knowledge, information and belief. However, the language of the Complaint/Civil Action is that of counsel and, to the extent that the foregoing pleading goes beyond the factual information which I have provided to counsel, I have relied upon counsel in making this verification.

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unworn falsification to authorities.

Date:

1/24/08  
\_\_\_\_\_  
David McKee

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>DAVID McKEE and JUDITH McKEE</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>PAUL DeJULIIS, CHARLES WILSON, RANDALL GILLESPIE, and EXPANKO CORK COMPANY, INC.</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No.</p>
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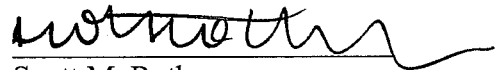
**CERTIFICATE OF SERVICE**

I, Scott M. Rothman, hereby certify that I served a true and correct copy of the Notice of Removal in the above-captioned action by first class U.S. Mail, postage prepaid, on the following:

Nancy J. Glidden, Esquire  
Unruh, Turner, Burke & Frees, P.C.  
P.O. Box 515  
West Chester, PA 19381-0515

Prothonotary's Office  
Chester County Court of Common Pleas  
2 N. High Street, Suite 130  
P.O. Box 2748  
West Chester, PA 19380

Date: 2/12/08

  
Scott M. Rothman